

### **REMARKS/ARGUMENTS**

The present Reply is being filed in response to the final Official Action of September 18, 2008. Pending Claims 8-21 remain allowed. Nonetheless, the final Official Action continues to reject the remaining claims, namely Claims 1-7 and now Claim 22, under 35 U.S.C. § 112, first paragraph, for failing to comply with the enablement requirement; the Official Action alleging that Claims 1-7 constitute “single means claims.” As explained below, however, Applicants respectfully disagree and submit that Claims 1-7 and 22 do in fact satisfy the enablement requirement; and accordingly, Applicants respectfully traverse the rejection of the claims. In view of the remarks presented herein, Applicants respectfully request reconsideration and allowance of all of the pending claims of the present application. Alternatively, as the remarks presented herein do not raise any new issues or introduce any new matter, Applicants respectfully request entry of this Reply for purposes of narrowing the issues upon appeal.

As indicated above, the Official Action continues to reject Claims 1-7 for failing to comply with the enablement requirement, alleging that those claims constitute “single means claims” in that those claims include a means-plus-function recitation as per 35 U.S.C. § 112, sixth paragraph, without another recited element in combination therewith. *See* MPEP § 2164.08(a). In this regard, the Examiner appears to interpret the recited “processor” as a means-plus-function recitation subject to 35 U.S.C. § 112, sixth paragraph. To the contrary, however, Applicants respectfully submit that the recited “processor” is a structural element, and that none of Claims 1-7 and 22 are written in so as to invoke § 112, sixth paragraph; and therefore, none of Claims 1-7 or 22 are subject to the enablement requirement of reciting a combination of means elements.

As explained in the MPEP and in response to the previous Official Action of Apr. 3, 2008, “a claim element that does not include the phrase ‘means for’ or ‘step for’ will not be considered to invoke 35 U.S.C. 112, sixth paragraph.” MPEP § 2181(I). As further explained in the MPEP:

*[I]f a claim limitation does not use the phrase “means for” or “step for,” that is, the first prong of the 3-prong analysis is not met, the examiner will not treat such a claim limitation under 35 U.S.C. 112, sixth paragraph.*

*Id.* (emphasis added). In the instant case, Claims 1-7 and 22 recite a processor “configured to”

perform a number of recited functions. However, no element of Claims 1-7 or 22 includes the phrase ‘means for’ or ‘step for,’ as required by the MPEP to be interpreted as a means-plus-function element. And as none of Claims 1-7 or 22 invoke 35 U.S.C. 112, sixth paragraph, none of Claims 1-7 or 22 are subject to the enablement requirement of reciting a combination of means elements, as per by MPEP § 2164.08(a).

As has been held by the Court of Appeals for the Federal Circuit, to determine if a claim element invokes section 112, paragraph 6, use of the word “means” gives rise to “a presumption that the inventor used the term advisedly to invoke the statutory mandates for means-plus-function clauses.” *Sage Products, Inc. v. Devon Industries, Inc.*, 126 F.3d 1420, 1427 (Fed. Cir. 1997), *quoting York Prods., Inc. v. Central Tractor Farm & Family Ctr.*, 99 F.3d 1568, 1574 (Fed. Cir. 1996); and *see Personalized Media Commc’ns, LLC v. Int’l Trade Com’n*, 161 F.3d 696, 703 (Fed. Cir. 1998). Conversely, “failure to use the word ‘means’ creates a presumption that [section 112, paragraph 6] does not apply.” *Personalized Media Commc’ns, LLC*, 161 F.3d at 703-04. And as the Court of Appeals for the Federal Circuit has noted, “the presumption flowing from the absence of the term ‘means’ is a strong one that is not readily overcome.” *Lighting World, Inc. v. Birchwood Lighting, Inc.*, 382 F.3d 1354, 1358 (Fed. Cir. 2004) (emphasis added).

As indicated above, none of Claims 1-7 or 22 uses the word “means,” and as such, a presumption exists that Claims 1-7 and 22 do not fall under section 112, paragraph 6. And nowhere does the Office provide any explanation, reasoning or other evidence to overcome this presumption. Aside from citing case law standing for the proposition that single-means claims are improper, the only remarks provided by the Office that the recitation of independent Claim 1 should be treated under section 112, paragraph 6, is as follows:

*... In claim 1, it is only a processor which is performing all the functions, hence giving rise to a single means claim.*

Official Action of Apr. 3, 2008, page 2; and repeated at Official Action of Sep. 18, 2008, page 2, and at page 3. Other than concluding that a processor constitutes a means-plus-function recitation, however, the Office has provided no explanation, reasoning or other evidence to support this conclusion, much less any explanation, reasoning or other evidence that would

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overcome a presumption that the recitation does not constitute a means-plus-function recitation.

For at least the foregoing reasons, Applicants respectfully submit that the rejection of Claims 1-7 and 22 under 35 U.S.C. § 112, first paragraph, is overcome.

**CONCLUSION**

In view of the remarks presented above, Applicants respectfully submit that the present application is in condition for allowance. As such, the issuance of a Notice of Allowance is therefore respectfully requested. In order to expedite the examination of the present application, the Examiner is encouraged to contact Applicants' undersigned attorney in order to resolve any remaining issues. As explained above, no new matter or issues are raised by this Reply, and as such, Applicants alternatively respectfully request entry of this Reply for purposes of narrowing the issues upon appeal.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



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